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EXAMINER

REFAI, RAMSEY

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/089,253	<b>Applicant(s)</b> LANGER ET AL.	
	<b>Examiner</b> Ramsey Refai	<b>Art Unit</b> 3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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## DETAILED ACTION

### *Response to Amendment*

Responsive to Request for Continued Examination (RCE) filed September 3, 2008. Claims 1, 3, 4, 5, 8, 11, and 18 have been amended. Claims 1-20 remain presented.

### *Response to Arguments*

1. Applicant's arguments have been fully considered but they are not persuasive.

In the remarks, the Applicant argues with substance:

**Argument A:** *the Applicant asserts that the Examiner has not made a prima facie case of inherency.*

In response, the Examiner disagrees with the Applicant's interpretation of the rejection. The Examiner has not rejected the limitations based on inherency but rather has addressed a particular embodiment of the claims. The language of the claims has created at least two separate embodiments/conditions. The first embodiment involves the condition when the customer does not have sufficient funds. The second involves the condition when the customer does have sufficient funds. The Examiner has addressed the embodiment when the customer does not have sufficient funds. These multiple embodiments are the result of the conditional language of the claims, more particularly the use of "if" and "when". MPEP 2111.04 states, "Claim scope is not limited by claim language that suggests or makes optional but **does not require steps to be performed**, or by claim language that **does not limit a claim to a particular structure**." Therefore the claims have been properly addressed according to one embodiment of the claimed methods.

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**Argument B:** *The conclusion of obviousness is based on impermissible hindsight.*

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). It was noted that Hultgren fails to teach the controlling and operating a *vending machine* from a mobile telephone. However, in the same field of endeavor, Stewen teach using a telephone to pay for purchases made through a vending machine wherein charges for items received from a vending machine are applied to a user's telephone account (see page 2, lines 14-27, abstract, page 5, lines 14-28, also Applicant's remarks on 14 of the remarks dated March 5, 2008). It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to combine Hultgren and Stewen because doing so would allow Hultgren's system to be used to purchase items from a vending machine.

Additionally, it is noted that **KSR** forecloses the argument that a **specific** teaching, suggestion, or motivation is required to support a finding of obviousness. Under **KSR**, a claim would have been obvious if the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded nothing more than **predictable results** to one of ordinary skill in the art at the time of the invention. Furthermore, under **KSR**, a claim would have been obvious if a particular known technique was recognized as part of the ordinary capabilities of one skilled in the art. Thus the claimed subject matter likely would have been obvious under **KSR**.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-9 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hultgren (US Patent No. 6,868,391) in view of Stewen (WO 99/22346).

4. As per claim 1, Hultgren teaches a method for controlling and operating a machine having a mobile radio communication transmit/receive unit and configured to be called from a user's mobile telephone unit over a mobile telephone network via an abbreviated mobile telephone number affixed on machine, comprising:

upon receipt of a call from the user's mobile telephone unit to the abbreviated mobile telephone number (**column 4, lines 50-65**), establishing a connection to a bank (**column 4, lines 22-25; bank account**) and determining if the user has an account at that bank, and if so, whether there are sufficient funds in the user's account (**column 7, lines 18-47; checks for sufficient funds in customer account**),

if the user has an account and there are sufficient funds prompting, via the vending machine, the user to select a merchandise item, after the merchandise item has been dispensed, generating, a billing entry in the vending machine, and settling the billing entry via a payment gateway, the step of settling comprising accessing the user's account, determining the user's account number based on the user's mobile telephone number, and issuing a request

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with a reference to a vending machine to reserve a certain maximum amount on the mini payment account of the user who has been uniquely identified based on his telephone number **(due to claim language, these limitations are not required since the prior art teaches the scenario when the customer does not have sufficient funds, see column 7, lines 39-47).**

Hultgren fails to teach the controlling and operating a *vending machine* from a mobile telephone. However, in the same field of endeavor, Stewen teach using a telephone to pay for purchases made through a vending machine wherein charges for items received from a vending machine are applied to a user's telephone account **(see page 2, lines 14-27, abstract, page 5, lines 14-28, also Applicant's remarks on 14 of the remarks dated March 5, 2008)**. It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to combine Hultgren and Stewen because doing so would allow Hultgren's system to be used to purchase items from a vending machine.

5. As per claim 2, Hultgren teaches wherein charging for the dispensed merchandise takes place by combining standard IN traffic control with standard Internet payment systems **(due to claim language, these limitations are not required since the prior art teaches the scenario when the customer does not have sufficient funds, see column 7, lines 39-47).**

6. As per claim 3, Hultgren teaches a method further comprising: determining the actual telephone number of the vending machine in an intelligent-network control point, establishing a connection from the intelligent network control point to the payment gateway **(due to claim language, these limitations are not required since the prior art teaches the scenario when the customer does not have sufficient funds, see column 7, lines 39-47).**

7. As per claim 4, Hultgren teaches a method further comprising: when sufficient funds exist in the user's account, making the reservation of the certain maximum amount with the reference to the telephone number of the vending machine, positively acknowledging the

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reservation in the intelligent network control point and holding the reserved amount unavailable for other payments until the reserved amount has been cleared **(due to claim language, these limitations are not required since the prior art teaches the scenario when the customer does not have sufficient funds, see column 7, lines 39-47).**

8. As per claim 5, Hultgren teaches a method further comprising :if the acknowledgment from the payment gateway is positive, informing via the intelligent network control point a mobile switching center of an unabridged telephone number for the vending machine, establishing a voice connection via the mobile switching center to the vending machine, identifying, in the vending machine from the ISDN signal the telephone number of the user, and wherein the step of prompting the user via the vending machine to select merchandise item comprising prompting the user in such a way that the use communicates with the automatic vending machine via his mobile telephone unit, where after the user is prompted to select a merchandise item, the GSM connection between the user and vending machine is initiated by the vending machine, wherein when the user presses a selection button, the selected merchandise item is dispensed and wherein the step of generating a billing entry comprises causing the vending machine to generate an electronic billing entry **(due to claim language, these limitations are not required since the prior art teaches the scenario when the customer does not have sufficient funds, see column 7, lines 39-47).**

9. As per claim 6, Hultgren teaches a method wherein the billing entry includes the vending machine telephone number, the GSM user's telephone number, a merchandise identification and the price **(due to claim language, these limitations are not required since the prior art teaches the scenario when the customer does not have sufficient funds, see column 7, lines 39-47).**

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10. As per claim 7, Hultgren teaches a method further comprises transmitting the billing entry by the vending machine to the payment gateway via a GSM short message or GSM-USSD **(due to claim language, these limitations are not required since the prior art teaches the scenario when the customer does not have sufficient funds, see column 7, lines 39-47).**

11. As per claim 8, Hultgren teaches a method further comprising receiving the electronic billing entry at the payment gateway, determining at the payment gateway, based on the GSM telephone number of the user, the account of the user, and recognizing and clearing at the payment gateway based on the vending machine telephone number, the reservation previously made by the intelligent network service point, wherein the step of recognizing and clearing comprises debiting the cost of the merchandise item to the user's account and crediting the cost of the merchandise item to an account of the vending machine via a credit entry **(due to claim language, these limitations are not required since the prior art teaches the scenario when the customer does not have sufficient funds, see column 7, lines 39-47).**

12. As per claim 9, Hultgren-Stewen teaches a method according to controlling the vending machine by a voice connection **(Stewen: page 2, lines 14-27, abstract, page 5, lines 14-28).**

13. Claim 18 contains similar limitations as claim 1 above and therefore is rejected under the same rationale.

14. As per claim 19, Hultgren teaches wherein the electronic billing entry contains the machine call number, the GSM user call number, an item identifier, and the price **(due to claim language, these limitations are not required since the prior art teaches the scenario when the customer does not have sufficient funds, see column 7, lines 39-47).**



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15. Claims 10-17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hultgren (US Patent No. 6,868,391) in view of Stewen (WO 99/22346) in further view of "Official Notice".

16. As per claim 10, Hultgren teaches a method for activating and operating and automatic machine, which has a mobile radio telephone transmitting/receiving device and can be called from a mobile radio telephone terminal of the user via a mobile radio telephone call number installed on the machine via a mobile radio telephone network, comprising:

requesting, via the automatic machine upon receipt of a call from a user to the mobile radio telephone call number, that a maximum amount of money be reserved from a user's bank account in a bank (**column 6, lines 14-50, column 4, lines 48-55, fig 3A**),

processing the reservation via a payment gateway connected to the bank comprising: determining whether the user has a mini-payment account set up at the bank using the mobile radio telephone call number of the user; accessing the mini-payment account of the user to determine if the user has sufficient credit to pay the voucher (**column 7, lines 18-47**);

determining, at an intelligent network service control point of the mobile radio telephone network, an actual call number of the automatic machine (**column 6, lines 50-column 7, lines 17,column 4, line 48-column 5, line 4**);

producing a connection from the intelligent network service control point to the payment gateway; sending a request from the intelligent network service control point to the payment gateway for a reservation for said maximum amount to be held in the mini-payment account of the user identified by the user's call number (**column 4, line 48-column 5, line 4, column 7,lines 18-37**);

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if there is sufficient credit, processing, by the payment gateway, the reservation and sending a positive acknowledgement to the intelligent network service control point **(due to claim language, these limitations are not required since the prior art teaches the scenario when the customer does not have sufficient funds, see column 7, lines 39-47);**

if there is not sufficient credit, or if the user does not have an account at the bank, sending a negative acknowledgment from the payment gateway to the intelligent network service control point **(column 7, lines 39-43),**

upon receipt of the positive acknowledgment by the intelligent network service control point: sending an instruction from the intelligent network service point to the mobile switching center of the actual call number of the automatic machine, causing the mobile switching center to initiate a voice connection to the automatic machine; prompting, by the automatic machine, the user to select an item; and ejecting the item at the automatic machine in response to the selection **(due to claim language, these limitations are not required since the prior art teaches the scenario when the customer does not have sufficient funds, see column 7, lines 39-47).**

Hultgren fails to teach the controlling and operating a *vending machine* from a mobile telephone. However, in the same field of endeavor, Stewen teach using a telephone to pay for purchases made through a vending machine wherein charges for items received from a vending machine are applied to a user's telephone account **(see page 2, lines 14-27, abstract, page 5, lines 14-28, also Applicant's remarks on 14 of the remarks dated March 5, 2008).** It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to combine Hultgren and Stewen because doing so would allow Hultgren's system to be used to purchase items from a vending machine.

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Furthermore, Hultgren fails to teach *terminating the call*. However, "Official Notice" is taken that the concept and advantages of this feature are well known in the art. It is well known in the art to terminate a call if the caller cannot proceed with the automated telephonic transaction. Hultgren teaches the customer is notified of an invalid transaction resulting from insufficient funds via a message (**see at least fig 3A: 318, column 7, lines 39-47**). Since the customer is using a telephone to buy goods and services by dialing the number, it would have been obvious to modify Hultgren to merely terminate the call instead of sending a message because doing so would end the transaction and allow the customer to retry the transaction.

17. As per claim 11, Hultgren teaches wherein billing for the item issued takes place by coupling standard intelligent network traffic control to standard Internet payment systems (**Figs 1, 5B-5C**).

18. As per claim 12, Hultgren teaches wherein if there is sufficient credit in the mini-payment account the reservation relating to the call number of the automatic vending machine is carried out in positively acknowledged to the intelligent network service control point, wherein the reserved amount is not available for other payments until the reservation has been canceled (**due to claim language, these limitations are not required since the prior art teaches the scenario when the customer does not have sufficient funds, see column 7, lines 39-47**).

19. As per claim 13, Hultgren teaches further comprising:

upon receipt of the positive acknowledgment, extracting, by the automatic vending machine, the user's call number from the ISDN signaling, wherein the user communicates with the automatic vending machine via the user's mobile telephone and accordingly the GSM connection between the user and the automatic vending machine is triggered by the automatic vending machine, and wherein after the item is ejected, the automatic vending machine

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produces an electronic billing entry **(due to claim language, these limitations are not required since the prior art teaches the scenario when the customer does not have sufficient funds, see column 7, lines 39-47).**

20. As per claims 14, and 17, Hultgren-Stewen teaches a method according to controlling the vending machine by a voice connection **(Stewen: page 2, lines 14-27, abstract, page 5, lines 14-28).**

21. As per claim 15, Hultgren teaches transmitting the electronic billing entry from the automatic vending machine to the payment gateway using a GSM short message or a GSM unstructured supplementary service data **(due to claim language, these limitations are not required since the prior art teaches the scenario when the customer does not have sufficient funds, see column 7, lines 39-47).**

22. As per claim 16, Hultgren teaches when the payment gateway receives the electronic billing entry from the automatic vending machine: using the user's GSM call number to determine the user's mini- payment account; using the automatic vending machine call number to identify and cancel the reservation previously reserved by the intelligent network service control point; debiting an amount equal to a price of the item from the user's mini- account; and crediting said amount to the account of the automatic vending machine operator via a credit note **(due to claim language, these limitations are not required since the prior art teaches the scenario when the customer does not have sufficient funds, see column 7, lines 39-47).**

23. As per claim 20, Hultgren teaches determining if the user does not have an account, there are insufficient funds, or the user is on a black list **(column 7, lines 39-47)** but fails to teach *terminating the call between the automatic vending machine and the user's mobile telephone unit*. However, "Official Notice" is taken that the concept and advantages of this

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feature are well known in the art. It is well known in the art to terminate a call if the caller cannot proceed with the automated telephonic transaction. Hultgren teaches the customer is notified of an invalid transaction resulting from insufficient funds via a message (**see at least fig 3A: 318, column 7, lines 39-47**). Since the customer is using a telephone to buy goods and services by dialing the number, it would have been obvious to modify Hultgren to merely terminate the call instead of sending a message because doing so would end the transaction and allow the customer to retry the transaction.

### ***Conclusion***

Examiner's Note: The Examiner has cited specific citations in the reference(s) as applied to the claim(s) above for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that the Applicant, in preparing their response, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramsey Refai whose telephone number is (571) 272-3975. The examiner can normally be reached on M-F 8:30 - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan Zeender can be reached on (571) 272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Ramsey Refai  
September 13, 2008  
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Examiner, Art Unit 3627

/F. Ryan Zeender/  
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